THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 21188 of 2006

O r d e r:

The petitioner was appointed as Casual Conductor on daily wage basis in the respondents-APSRTC in the year 1998. On 05.07.1999, while she was conducting the bus, a check was exercised by the checking officials, and subsequently she was issued a charge sheet alleging certain cash and ticket irregularities. She submitted her explanation denying the charges leveled against her. Thereafter, an enquiry was conducted, and the Enquiry Officer, who conducted the enquiry, submitted his report stating that the charges leveled against the petitioner are proved. Based on the enquiry report, a notice dated 06.12.1999, was issued to the petitioner to show cause as to why she shall not be removed from service. The petitioner submitted her explanation thereto on 22.12.1999. Upon consideration of the same, the 1st respondent-Depot Manager, passed an order dated 27.12.1999 removing the petitioner from service. Assailing the said order, the petitioner preferred an appeal, which was rejected by the Deputy Chief Traffic manager, vide order dated 14.09.2000, and the review filed by the petitioner was also rejected by the Regional Manager, vide order dated 23.02.2001. Aggrieved thereby, the petitioner raised an industrial dispute in I.D. No.5 of 2002, and the Labour Court, vide award dated 25.08.2004, set aside the order of removal, passed by the 1st respondent, as confirmed by the appellate and review authorities, and directed the 1st respondent-Corporation to reinstate the petitioner into service as fresh Conductor but without continuity of service, back wages or attendant benefits. Questioning the said award insofar as not granting continuity of service, back wages and attendant benefits,

the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the Labour Court, having held that the petitioner is not guilty of misconduct and having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate and review authorities, and having ordered her reinstatement into service, ought to have granted the consequential reliefs that ensue upon reinstatement, and non-granting of the same, is illegal and arbitrary, and more so when the petitioner was not gainfully employed during the period she was out of service and reinstated into service.

The learned Standing Counsel for the 1st respondent-APSRTC, however, supported the impugned order. He submitted that the charges against the petitioner stood proved. Though the disciplinary authority passed order of removal, which was confirmed by the appellate and review authorities, the Labour Court, though concurred with the view of the disciplinary authority and found that the charges are proved, having held that misconduct is not proved in respect of charges and punishment of removal is shockingly disproportionate to the charges proved, has taken a lenient view and ordered to reinstate the petitioner as fresh conductor on daily wage basis without continuity of service and back wages, and the same cannot be said to be an illegal or arbitrary award, and prayed that no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

As can be seen from the award of the Labour Court, the petitioner did not allege any irregularities in the conduct of the domestic enquiry. It is a case of failure of 'issue and start', non-issuance of tickets to the passengers, and failure to close the tray numbers of all denominations in the SR at the time of check. In the enquiry, the charges leveled against the petitioner stood proved. Based on the enquiry report, a show cause notice was issued, and upon considering the explanation submitted by the petitioner thereto, the disciplinary authority, passed an order of removal, which in appeal and review was confirmed. The Labour Court, on re-appreciation of the statements of the TTIs, petitioner and the respective passengers, though found that the charges are proved, it held that as the petitioner was actually in the process of issuing tickets at the time of check, no case of misappropriation is established and the petitioner is not guilty of misconduct. Holding so, the Labour Court felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the charges proved, and accordingly set aside the order of removal, and directed her reinstatement into service without backwages and continuity of service. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that she is entitled to backwages.

Backwages do not follow as a result of the order of removal or

termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate and review authorities, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the charges proved.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate and review authorities, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because she remained out of employment during the period between the date of her removal from service and till she was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 14th November, 2006.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63